IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 902 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA
HONOURABLE MR.JUSTICE SHARAD D.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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THE STATE OF GUJARAT - Appellant(s)
Versus
DIPUJI NAVUJI RATHOD - Opponent(s)

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Appearance :
Mr.K.C.Shah, APP for Appellant(s) : 1,
None for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA

and

HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 16/03/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE SHARAD D.DAVE)

1. This appeal is preferred by the State under Section 378(1)(3) of the Code of Criminal Procedure against the judgment and order delivered by Special Judge, Ahmedabad (Rural), Fast Track Court No.10, Gandhinagar on 26.3.2004 in Special Case(A.C.B.) No.2 of 1998, whereby the present opponent came to be acquitted for the charges levelled against him under Section 13(2) of the Prevention of Corruption Act, 1988.

2. The prosecution case is such that information was received by the complainant's office that bribes were demanded by Local Police Officer, R.T.Officer and Forest Officer from truck and loading drivers while they were passing from the border of Ahmedabad Rural and Gandhinagar under the guise of entry fee. Therefore, the complainant Police Inspector Mr.Vaishnav carried out raid along with the raiding party. In the said raid, one driver Vasanaji was given currency note of Rs.100/- with anthracene powder applied on it and on demand from the accused Kanaiyalal Pranlal Patel, he handed over the said currency note to him and the raiding party caught the accused Kanaiyalal Pranlal Patel and Dipuji Navuji Rathod who was present there at that point of time.

3. Thereafter, the complainant P.S.I., filed the complaint and after the investigation, filed the charge sheet. Pursuant to the charge sheet, the learned Court issued summons to both the accused. The

summons issued to accused _ Kanaiyalal Prandas Patel returned with the endorsement that he died on 3.7.2001 and, therefore, the case was abated against the said accused vide order dated 5.12.2003 and the case against the other accused Dipuji Vanuji Rathod proceeded further.

4. Thereafter, charge against the accused was framed on 22.1.2004 and as the accused pleaded not guilty, the prosecution recorded the evidences of various witnesses and led documentary evidence. Thereafter, further statement of the accused was recorded under Section 313 of the Criminal Procedure Code. After hearing both the sides, learned Special Judge acquitted the accused against which the present appeal is filed by the State.

5. The prosecution examined the following witnesses; (1) P.W.1 Harshadkumar Mangaldas Pandya,Exh.13, (2) P.W.2 Harshadkumar Kantilal Mehta (complainant) P.I.A.C.B. Exh.16, and (3) P.W.3 Dilip Kapilrav Vaishnav (Investigating Officer) P.I.A.C.B. Exh.18. The prosecution also led various documentary evidence.

6. The learned Judge discussed the deposition of panch witness in detail who has stated the entire procedure followed for conducting the trap. He stated that the amount of Rs.100/- was given to the driver Vasjani Rupaji Marwadi who agreed to act as decoi witness in the trap and on the demand being made by

the accused Kanaiyalal Pranlal Patel, he gave the said amount to him and made the signal as planned. Thereafter, the members of the raiding party came there and completed the further procedure of seizing the articles from the said accused and completed the panchanama. Thereafter, according to this witness, they went to the other accused Dipuji Navuji Rathod who was sitting on the cot and asked his name etc. However, this witness in his cross-examination, has stated that it is true that this accused Dipuji did not stop the truck, he did not demand money, he did not accept the money and the amount of money given by the decoi witness was not found from this accused. He further admitted that the amount of illegal gratification was found from the other accused Kanaiyalal. He further stated that till the panchanama was completed and the panchas signed therein, it has not come out that this accused has share in the said amount received by the other accused Kanaiayalal. He also stated that till the panchanama was completed, the police did not arrest this accused Dipuji and even Dipuji did not come to the place where they stood till the entire procedure was completed. Thus, discussing the evidence of this witness, learned trial Judge came to the conclusion from the deposition of this witness that it is not proved that this accused has stopped the truck, he has demanded the money or accepted the money or that he had a share in the money accepted by the other accused or that the other accused Kanaiyalal accepted the money on behalf of this accused Dipuji.

7. Further, learned trial Judge discussed the evidence of the complainant Harshad Kantilal Mehta, who has stated the entire procedure done by him and the raiding party members in the trap. However, he has admitted in his cross-examination that this accused Dipuji has not stopped the truck, he has not come to the truck, he has not demanded the money and he has not accepted the money. He further admitted that this accused sat on the cot throughout, the other accused Kanaiyalal did not go to this accused Dipuji to give the money and both these accused did not talk to each other till the entire panchanama was over. He further stated that they have taken this accused Dipuji as accused in the routine course.

8. Thus, discussing both these depositions, learned trial Judge came to the conclusion that nothing has come on record that this accused Dipuji went to stop the truck, he came there at the truck, he demanded the money or accepted the money and that accused no.1 Kanaiyalal has accepted the money on behalf of this accused Dipuji or that both the accused had talk with each other and that nothing has been seized from the accused Dipuji. Further, as per the say of the complainant himself, this accused Dipuji is joined as accused in routine course and, therefore, the complaint against this accused cannot be maintainable.

9. We have carefully gone through the

contentions raised as well as we have scanned the record and proceedings of the Special Case called for from the trial Court. We have scanned the evidence of each witnesses and appreciated each circumstances of the case.

10. Needless to say that in appeal against acquittal also, the High Court possesses the same powers as in appeal against the order of conviction. The High Court may reappreciate the evidence and give its own finding. But in appeal against acquittal if the High Court comes to different finding than the finding derived with by the trial Court then the High Court must deal with the grounds of acquittal advanced by the trial Court. Unless the reasons given by the trial Court are manifestly perverse as unable to stand to reason in any circumstances, interference would be justified in acquittal appeals. However, from the same appreciation of evidence if two views are possible, the view taken by the trial Court cannot be replaced by the second view.

11. We do not find, therefore, reasoning of the trial Judge extensively perverse so as to interfere with at this stage.

12. In view of the above, this appeal stands dismissed.

(J.R.VORA, J)

(SHARAD D DAVE, J)

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